IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 515 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GOPALBHAI PREMALBHAI PANDYA

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 515 of 2004

MR HR PRAJAPATI for Petitioner No. 1

Ms P B Sheth, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 01/04/2004

ORAL JUDGEMENT

The petitioner abovenamed has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside the order of detention dated 5.1.2004 passed by respondent no.2 herein in exercise of powers under section 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, detaining the detenu under section 3(2) thereof. The case of the detenu was that without holding a valid licence, the detenu was dealing in sale and purchase of blue kerosene which is a controlled commodity and the sale or purchase thereof is impermissible without holding valid licence. It was also alleged against him that on 17.7.2003, an enquiry was conducted and it was found that the petitioner was dealing in the sale and purchase of blue kerosene and, therefore, the second respondent found that it was necessary to detain the detenu immediately with a view to prevent him from carrying on the aforesaid illegal activity. Therefore, the impugned order was passed against him. The petitioner has challenged the said order. The petitioner has contended that though the bail application and bail order have been considered by the detaining authority, copies thereof has not been supplied to the detenu. It has also been contended that there is delay in passing the order of detention. That therefore, the order of detention is illegal and deserves to be set aside. The petitioner has, therefore, prayed to quash and set aside the impugned order of detention.

2. On receipt of the petition, rule was issued and Ms.P B Sheth, learned AGP has appeared for respondents 1 to 3 and Ms. P J Davawala, learned Central Government Standing Counsel appeared for respondent no.4. The learned AGP has submitted affidavit of the detaining authority which is taken on record.

3. I have heard the learned Advocates for the parties and have perused the papers. Learned Advocate for the petitioner has contended that though there is reference to bail application and bail order in the grounds of detention in para 6 at page 21, the copy of the bail application has not been supplied to the petitioner along with the order of detention and the grounds of detention. With a view to understand the contention of the learned Advocate for the petitioner, we can refer to the averments made in para 6 of the grounds of detention at page 21. There it has been mentioned that the offence was registered before Nadiad Town Police Station CR No.107/2003 under section 3 read with section 7 of the Essential Commodities Act, 1955. It has also been mentioned in it that the detenu had made application for his release on bail by way of filing

Cr.Misc.Application No.493/2003 on 23.7.2003. The Sessions Court at Nadiad dismissed the said application on 29.7.2003.

4. In sofar as the bail application and the order on the said application are concerned, it can be gathered from the compilation with copies thereof which have been supplied to the detenu. Therefore, there cannot be any dispute about the same. It has further been mentioned in para 6 of the grounds of detention that after dismissal of the application of the detenu by the Sessions Court, the detenu had applied for his enlargement on bail before this court by Criminal Misc.Application No.6007/2003. That this court had allowed the said application on 8.8.2003 and directed release of the applicant on bail. Now so far as the compilation is concerned, copy of the bail order can be gathered from the said compilation. Learned Advocate for the petitioner contends that the copy of the bail order has not been supplied. However, when the translated version of the order has been supplied and when it is not the case of the petitioner that he was unable to follow the language, then in that event, supply of Gujarati version of the bail order can be treated to be substantial compliance. Therefore, this point cannot help the petitioner. It has also been contended that copy of the bail application or even English version thereof has not been supplied to the detenu. On going through the compilation, it appears that so far as the bail application before the trial court is concerned, a copy thereof has already been supplied to the detenu. However, the compilation does not indicate that copy of the bail application presented to this court has also been supplied to the detenu. This shows that though the bail application was considered by the detaining authority, a copy thereof was not supplied to the detenu. The said bail application could not be said to be a totally extraneous matter and, therefore, it could not be treated to be a totally and irrelevant factor. Therefore, when the bail application was considered by the detaining authority, it was also the duty of the detaining authority to see that the copy thereof is supplied to the petitioner. It has not been supplied. Therefore, there is apparent violation of principles of natural justice. It would be clear that on account of non-supply thereof, the petitioner would not be in a position to submit effective representation and when the detenu was unable to avail of the said right conferred on him under Article 22 (5) of the Constitution, the further continuation of the detention of the detenu cannot be sustained in the eye of law. It has also been contended that the order in question has

been passed after much lapse of time. Here we find that though inspection was carried out in respect of the shop of the detenu on 17.7.2003 and though the FIR was filed and enquiry was concluded, the order has been passed as late as on 5.1.2004. This delay has not been explained and, therefore, it can be said that there was no immediate need on the part of the detaining authority to detain the detenu. The detaining authority waited for nearly for four months and thereafter the order was passed. When it is found that it was not a matter of urgency to immediately detain the detenu, then in that event, the order of detention cannot be upheld or confirmed.

5. In above view of the matter, the order of detention cannot be treated to be valid and legal and, therefore, it would be necessary for this court to set aside and quash the same in exercise of the writ jurisdiction under Article 226 of the Constitution.

6. For the foregoing reasons, this petition is allowed. The impugned order dated 05.1.2004 passed by respondent No.2 in exercise of powers under section 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 detaining the present detenu, is ordered to be set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]
msp